IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7340 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURENDRABHAI NATHUBHAI PATEL (SON) - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR RE VARIAVA for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7
Shri MR Mengdey, AGP for respondent(s) : 1 - 2.
None for Respondent(s) : 3, 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.6,3.3.7
RULE SERVED for Respondent(s) : 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.2.6,3.2.7

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/09/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the judgment

and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, dated 11.1.2000 in Revision Application SRD No. 316/80 in allowing the same by quashing and setting aside the order passed by the Deputy Collector, Tribal Sub-Plan, Rajpipla dated 2.8.1979.

2. The land bearing Survey No. 268 admeasuring 4 acres and 6 gunthas situate at Village Daulatpur, Rajpipla was owned by one Gomda Chimatiya and the same came to be purchased by the petitioners by Sale Deed dated 23.11.1966. It is the case of the petitioner that in fact the said land was transferred by the original land-owner in his favour as far back as on 25.6.1958 and since 1958 he is in possession of the land in question. The Deputy Collector, Rajpipla initiated the proceedings for breach of Section 73-A of the Bombay Land Revenue Code [“the Code” for short] by registering Case No. 73-A/179 alleging inter alia that the original landowner was a member of Scheduled Tribe and that the land was subjected to restrictions contained in Section 73 of the Code, and that the transfer was made without obtaining permission of the Collector. The Deputy Collector by order dated 2.8.1979 holding that the transaction between the petitioner and the original landowner was not in breach of Section 73-A of the Code withdrawn the notice. The said order of 1979 came to be taken under revision at the instance of the heirs of the original landowner by the Secretary (Appeals),

Revenue Department, State of Gujarat, by way of Revision Application SRD No. 316/80. It was contended on behalf of the petitioner that though the land in question is situate in the area which was part of former State of Rajpipla and the survey settlement having been introduced in the State of Rajpipla and provisions contained in Section 73-A of the Code are not attracted, without considering the same the Deputy Collector (Appeals), State of Gujarat, allowed the said Revision Application by quashing and setting aside the order passed by the Deputy Collector, Tribal Sub-Plan, Rajpipla by further holding that the petitioner had not produced any supporting document as to when the settlement had taken place. Being aggrieved and dissatisfied with the order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, dated 11.1.2000/9.3.2000 in Revision Application SRD No. 316/80, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri RE Variava, learned advocate appearing on behalf of the petitioners has relied upon the Judgment of the learned Single Judge of this Court in the case of *Ranjitsinh P. Vasava & Ors., Vs. Secretary, Revenue Department & Anr.,* reported in *2001(1) GLR Page 229,* wherein the learned Single Judge of this Court has held that in the area of Rajpipla the original survey settlement under the

Code was introduced and Section 73 of the Bombay Land Revenue Code therefore do not apply. Therefore it is requested to allow the present Special Civil Application. Shri Variava has also submitted that the said judgment of the learned Single Judge has been confirmed by the Division Bench of this Court by order dated 3.1.2001 rendered in Letters Patent Appeal No. 23/2001. Shri Variava has also further submitted that even otherwise the exercise of powers by the Deputy Collector for breach of Section 73-A of the Code was after unreasonable period and that was after a period of 11 years and the Sale Deed and in fact it was after 21 years of the possession/transfer. It is therefore submitted that even on that ground also the petition should succeed and requested to allow the present Special Civil Application.

4. Though served, nobody appears on behalf of the private respondents. Shri MR Mengdey, learned AGP appears on behalf of the State Government and has tried to support the order passed by the Secretary (Appeals) while submitting that as the transaction in question is in breach of Section 73-A of the Code and the sale deed was after 1961 which was in 1968 the transaction was hit by Section 73A of the Code. It is therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on

behalf of the parties. It is not in dispute that the land in question is situate in the area of Rajpipla. There was a survey settlement in the area of Rajpipla and therefore as held by the learned Single Judge of this Court in the case of Ranjitsinh P. Vasava (supra) that as in the area of Rajpipla the original survey settlement under the Code was introduced and Section 73 of the Bombay Land Revenue Code therefore do not apply. Under the circumstances, the finding given by the Secretary (Appeals) in the Revision to the effect that the transaction between the petitioner and the original landowner was in breach of Section 73-A of the Code cannot be sustained. Even otherwise, it is required to be noted that the sale transaction had taken place in the year 1968 and in fact the petitioner is in possession of the land in question since 1958 and the Deputy Collector initiated the proceedings for alleged breach of Section 73-A of the Code after a period of 11 years of the sale transaction, i.e., in 1968 and after 21 years of transferring the possession. Under the circumstances, the exercise of power by the Deputy Collector after an unreasonable period, as held by the Hon'ble Supreme Court as well as by this Court also in catena of judgments, could not have been done by the Deputy Collector. Under the circumstances also, the alleged proceedings under Section 73-A of the Code were required to be held as not maintainable and were required to be dismissed.

6. For the reasons stated hereinabove, the petition succeeds. The Judgment and order passed by

the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, dated 9.3.2000 in Revision Application SRD No. 316/1980, is hereby quashed and set aside, and the order passed by the Deputy Collector, Tribal Sub-Plan, Rajpipla dated 2.8.1979 in 73-A Case No. 179 is hereby restored. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]